IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.360 OF 2006

WITH

WRIT PETITION NO.390 OF 2006

Papalal Farash & Ors. .. Petitioners

Versus

Proposed Vinayak Sahakari

Gruh Nirman Sanstha & Ors. .. Respondents

Mr.Walsangkar with P.J.Das for petitioners

Mr.G.S.Godbole for respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 7th Febryary 2006.

P.C.

. Heard Mr.Walsangkar for petitioner and Mr.Godbole for original plaintiffs.

2. Perused the order passed by the Court below on application Exh.241 preferred by the petitioners and application Exh.245 preferred by original plaintiff. Application preferred by the petitioner is for dismissal of the suit for want of compliance with Order I Rule 8 of C.P.C. whereas the application of the original plaintiff is to permit them to sue in representative capacity under this very provision.

3. Petitioners objection to the maintainability of the suit raised vide Exh.241 has been disallowed and at the same time trial court has granted permission to the original plaintiff to sue in representative capacity.

4. Having perused the order passed by the Court below on these applications, in my view, it

is not possible to interfere with the same in exercise of my limited jurisdiction under Article 227 of the Constitution of India. It is not possible to re-appreciate and re-appraise the materials which have led the Court to proceed to grant the relief in question. However, observations about maintainability of the suit shall not conclude the right of petitioners herein to raise that issue at an appropriate stage and for the trial court to deal with the same in accordance with law.

5. These observations shall not prevent the Court from going into the issue as to whether grant of such leave would mean that the suit is maintainable from the date of its institution or from the date of its order granting leave under Order I Rule 8 of C.P.C. Petition dismissed.

(S.C.DHARMADHIKARI, J)